

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MASSACHUSETTS**

INSITUFORM TECHNOLOGIES, INC.,)
)
)
Plaintiff,)
)
)
v.) Case No. 04-10487GAO
)
)
AMERICAN HOME ASSURANCE)
COMPANY,)
)
)
Defendant.)

**PART II TO EXHIBIT A TO
AFFIDAVIT OF ROBERT L. KELLEY**

Chapter 30

MASSACHUSETTS WATER RESOURCES AUTHORITY

GENERAL CONDITIONS OF THE CONTRACT

INDEX

		<u>PAGE</u>
<u>ARTICLE 1</u>	-	<u>DEFINITIONS; CONTRACT DOCUMENTS</u>
1.1		Definitions.....1
1.2		Interpretation of Contract Documents...3
<u>ARTICLE 2</u>	-	<u>ENGINEER'S AUTHORITY</u>
2.1		Engineer's Administration Of The Contract.....6
<u>ARTICLE 3</u>	-	<u>CONTRACTOR'S RESPONSIBILITIES</u>
3.1		Duty To Review Contract Documents And Site Conditions.....7
3.2		Progress Schedule; Schedule of Values.....8
3.3		Supervision By Contractor.....9
3.4		Labor And Materials.....11
3.5		Taxes.....13
3.6		Permits And Fees; Compliance With Law.....14
3.7		Utilities.....15
3.8		Documents At The Site.....18
3.9		Shop Drawings, Product Data And Samples.....18
3.10		Site.....20
3.11		Cutting And Patching Of Work.....21
3.12		Weather Protection.....21
3.13		Royalties And Patents.....22
<u>ARTICLE 4</u>	-	<u>PHYSICAL CONDITIONS; REFERENCE POINTS; MEDICAL AND SANITARY REQUIREMENTS</u>
4.1		Lines And Grades; Measurements.....23
4.2		Medical And Sanitary Requirements....24
4.3		Protection Against Occupational Hazards.....25
4.4		Domestic Water Supply.....25
4.5		Inspection.....25

0038

00700
- i -

ITI EBBS 000053

Chapter 30

<u>ARTICLE 5</u>	<u>INDEMNIFICATION</u>
5.1	Contractor's Indemnity.....26
<u>ARTICLE 6</u>	<u>SUBCONTRACTORS</u>
6.1	Subcontractors.....27
6.2	Subcontract Agreements.....28
<u>ARTICLE 7</u>	<u>OTHER WORK</u>
7.1	Authority's Right To Perform Work And To Award Separate Contracts.....29
7.2	Mutual Responsibility.....29
<u>ARTICLE 8</u>	<u>INSPECTION AND TESTING</u>
8.1	Inspection And Testing.....30
8.2	Special Testing.....31
8.3	Inspection Certificates And Permits..31
<u>ARTICLE 9</u>	<u>TIME</u>
9.1	Definitions.....31
9.2	Progress And Completion.....32
9.3	Delays And Extensions Of Time.....33
<u>ARTICLE 10</u>	<u>PAYMENTS AND COMPLETION</u>
10.1	Contract Sum.....36
10.2	Periodic Estimates And Requests For Payment.....36
10.3	Recommendation For Payment And Progress Payments To The Contractor.37
10.4	Payments To Subcontractors.....39
10.5	Payments After Completion.....42
10.6	Payment Not Acceptance.....45
10.7	Payments Withheld.....45
10.8	Failure Of Payment.....46
10.9	Substantial Completion.....46
10.10	Final Completion And Final Payment..47
10.11	Storage Of Materials Off Site.....48
10.12	Interpretation.....49
10.13	Penalties For False Claims.....49
<u>ARTICLE 11</u>	<u>SAFETY AND PROTECTION</u>
11.1	Safety Precautions And Programs.....50
11.2	Safety Of Persons And Property.....50
11.3	Emergencies.....54

Chapter 30

<u>ARTICLE 12</u> -	<u>BONDS AND INSURANCE</u>
12.1	Performance Bond And Labor And Material Payment Bond.....54
12.2	Contractor's Liability Insurance.....55
12.3	Property Insurance.....56
<u>ARTICLE 13</u> -	<u>CHANGES IN THE WORK</u>
13.1	Change Orders.....57
13.2	Not Used
13.3	Differing Sub-Surface Or Latent Physical Conditions.....60
13.4	Claims For Additional Cost Or Damages.....61
13.5	Minor Changes In The Work.....62
<u>ARTICLE 14</u> -	<u>CORRECTION OF WORK</u>
14.1	Uncovering Of Work.....62
14.2	Correction Of Work.....63
14.3	Acceptance Of Defective Or Non- Conforming Work.....64
<u>ARTICLE 15</u> -	<u>PARTIAL USE OR OCCUPANCY</u>64
<u>ARTICLE 16</u> -	<u>TERMINATION OF THE CONTRACT</u>
16.1	Termination By The Authority.....65
<u>ARTICLE 17</u> -	<u>AUTHORITY'S RIGHT TO STOP THE WORK AND TO CARRY OUT THE WORK</u>
17.1	Authority's Right To Stop The Work...67
17.2	Authority's Right To Carry Out The Work.....68
<u>ARTICLE 18</u> -	<u>WARRANTY</u>68
<u>ARTICLE 19</u> -	<u>DISPUTE RESOLUTION</u>70
<u>ARTICLE 20</u> -	<u>MISCELLANEOUS PROVISIONS</u>
20.1	Contract Documents.....71
20.2	Successors And Assigns.....71
20.3	Notices.....72
20.4	Anti-Boycott Covenant.....72
20.5	Rights And Remedies.....73
20.6	Right Of Audit.....73
20.7	Financial Records Of Contractor.....73
20.8	Price Reduction for Defective Cost or Pricing Data.....77

Chapter 30

GENERAL CONDITIONS OF THE CONTRACT

ARTICLE 1 - DEFINITIONS; CONTRACT DOCUMENTS

1.1 DEFINITIONS

Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:

1.1.1 Awarding Authority, Authority and Owner - The Massachusetts Water Resources Authority. The Authority may act directly or through its properly authorized representatives.

1.1.2 The term "approved" or "approval" means written approval.

1.1.3 Change Order - A written order to the Contractor authorizing an addition to, deletion from or revision in the Work, or authorizing an adjustment in the Contract Sum or Contract Time.

1.1.4 Contract Documents - The Contract, including Section 00030, Advertisement For Bids, Section 00100, Instructions to Bidders, Addenda and other bid documents, Section 00300, Bid Form, Section 00500, Authority-Contractor Agreement, Payment Bond, Performance Bond, Notice of Award, if any, Notice to Proceed, if any, Drawings, Specifications, Change Orders and other written amendments to the Contract executed by the Authority and the Contractor, Field Orders, and written or graphic instructions or interpretations issued by the Engineer pursuant to Subparagraph 1.2.4, Subparagraph 2.1.7 or other provisions of the Contract Documents.

1.1.5 Contract Sum - The total monies payable to the Contractor under the terms and conditions of the Contract Documents.

1.1.6 Contract Time - The time period stated in Section 00500, Authority-Contractor Agreement for the completion of the Work.

1.1.7 Contractor - The person, firm or corporation with whom the Authority has executed the Authority-Contractor Agreement, Section 00500.

1.1.8 Drawings - The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.9 Engineer - The person holding the position or acting in the capacity of Chief Engineer or Director of the respective

00700

- 1 -

Rev. 2 - 1/92

ITI EBBS 000056

Chapter 30

Division of the Authority with respect to the Work covered by this Contract, acting directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

1.1.10 Field Order - A written order issued by the Engineer to the Contractor which orders a minor change in the Work in accordance with Paragraph 13.5, and which does not involve an adjustment in the Contract Sum or an extension of the Contract Time.

1.1.11 Notice of Award - Written notice from the Authority to the successful bidder of the acceptance of the bidder's bid.

1.1.12 Notice to Proceed - A written communication issued by the Authority to the Contractor authorizing him to proceed with the Work and establishing the date of commencement of the Work.

1.1.13 Product Data - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product, assembly or system for some portion of the Work.

1.1.14 Project - The undertaking to be performed as provided in the Contract Documents.

1.1.15 Where the words "provide" or "provided" are used in the Contract Documents, such word(s) shall be construed to mean "furnish(ed)" and "install(ed)" and/or "connect(ed)", unless specifically stated otherwise.

1.1.16 Samples - Physical examples which illustrate materials, products, equipment or workmanship and which, when approved in accordance with the Contract Documents, establish standards by which the Work will be judged.

1.1.17 Where the words "shown" or "shown on Drawings" are used in the Specifications, such word(s) shall be construed to mean "noted", "indicated", "scheduled", "detailed", or any other diagrammatic or written reference made on any of the Contract Documents, including both Drawings and Sections of the Specifications.

1.1.18 The word "site" shall mean the Project site as shown on the Drawings.

1.1.19 Shop Drawings - All drawings, prints, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, manufacturer,

Chapter 30

Supplier or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

1.1.20 Specifications - That portion of the Contract Documents consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards and workmanship.

1.1.21 Subcontractor - An individual, firm or corporation having a contract with the Contractor or with any other Sub-contractor for the performance of a part of the Work at the site, including, if applicable, filed sub-bid Subcontractors as well as all other Subcontractors, regardless of tier.

1.1.22 Substantial Completion - As defined in Subparagraph 10.5.9.

1.1.23 Supplier - Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.

1.1.24 Work - All labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in the Project.

1.1.25 Unless the Contract Documents specifically provide otherwise or the context clearly requires a different meaning, the terms "directed", "required", "permitted", "ordered", "designated", "prescribed", and words of like import shall imply the direction, requirements, permission, designation or order of the Engineer, subject in each case to the final determination of the Authority; and "approved", "acceptable", "satisfactory" and words of like import shall mean approved by, or acceptable or satisfactory to the Engineer, subject in each case to the final determination of the Authority; and "necessary", "reasonable", "proper", "correct", and words of like import shall mean necessary, reasonable, proper or correct in the judgment of the Engineer, subject in each case to the final determination of the Authority.

1.2 INTERPRETATION OF CONTRACT DOCUMENTS

1.2.1 This Contract is subject to all laws, regulations, codes, rules and orders of the United States of America, the Commonwealth of Massachusetts and other public authorities, and all amendments thereto, and to all contracts and other agreements between the Authority and any such governmental or public authorities, and where any requirements contained herein do not conform to or are inconsistent with such laws, regulations, codes, rules, orders or agreements to which the Contract is

00700

- 3 -

Rev. 2 - 1/92

ITI EBBS 000058

Chapter 30

subject or by which it is governed, such laws, regulations, codes, rules, orders or agreements shall have precedence over any matters set forth herein. Statutes, regulations, and portions and summaries thereof which are set forth or referred to herein shall be construed to include all amendments thereto effective as of the date of issuance of Section 00030, Advertisement for Bids for the Contract. The Authority makes no representation as to and assumes no responsibility for the correctness or completeness of such statutory matters referred to or set forth herein.

1.2.2 By submitting a bid, and by executing the Authority-Contractor Agreement, Section 00500, the Contractor represents that he has examined and understands all of the Contract Documents and has visited the site, examined and familiarized himself with the local conditions under which the Work is to be performed, including any work in progress under previously awarded contracts, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to describe a functionally complete facility or result, or portion thereof, and it is intended that the Contractor shall furnish all labor, materials, tools and equipment necessary for the proper execution of the Work in accordance therewith, including all work incidental to or reasonably inferrable from the Contract Documents as being necessary to produce the intended results and to complete the Project in a satisfactory manner, ready for use, occupancy or operation by the Authority.

1.2.4 The Engineer may, as he deems desirable, issue additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work reasonably inferrable from the Contract Documents. Such additional drawings and instructions shall become a part of the Contract Documents without modification of the Contract Time or the Contract Sum, and the Contractor shall carry out the Work in accordance therewith.

1.2.5 In the event of conflicts, inconsistencies or discrepancies among the Contract Documents or within any of the Contract Documents, to the extent applicable the better quality or greater quantity of work shall be provided without change in the Contract Sum. In the event of such conflicts, inconsistencies or discrepancies which do not relate to the quality or quantity of work, the Contractor shall request instructions or interpretations from the Engineer as provided in the Contract Documents, and shall be governed by the Engineer's directions.

00700

- 4 -

Chapter 30

1.2.6 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

1.2.7 Where codes, standards, requirements or publications of public or private bodies are referred to in the Contract Documents, references shall be understood to be to the latest revision in effect on the date of Section 00030, Advertisement for Bids, except where otherwise indicated. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.8 The Drawings shall not be scaled for dimensions. If figured dimensions are not given on the Drawings, the Contractor shall request same from the Engineer giving reasonable advance notice.

1.2.9 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- .1 a formal written amendment,
- .2 a Change Order (pursuant to Paragraph 13.1).

The Contract Sum and the Contract Time may only be changed by a Change Order or a written amendment. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- .1 a Field Order (pursuant to Paragraph 13.5),
- .2 the Engineer's approval of a Shop Drawing, sample or other submittal (pursuant to Paragraph 3.9), or
- .3 the Engineer's written instruction, interpretation or clarification (pursuant to Subparagraph 1.2.4, Subparagraph 2.1.7, or otherwise).

1.2.10 If any term or provision of any of the Contract Documents, or the application thereof to any party or circumstance shall, to any extent, be determined to be invalid

00700

- 5 -

Rev. 2 - 1/92

ITI EBBS 000060

Chapter 30

or unenforceable, the remaining provisions of the Contract Documents, or the application of such term or provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of each of the Contract Documents shall be valid and shall be enforced to the fullest extent permitted by law.

1.2.11 The Contract Documents furnished to the Contractor, and all copies thereof and the copyright therein, are the property of the Authority. They are to be used only with respect to this Project, and are to be returned or satisfactorily accounted for to the Engineer, on request, upon final completion of the Work.

ARTICLE 2 - ENGINEER'S AUTHORITY

2.1 ENGINEER'S ADMINISTRATION OF THE CONTRACT

2.1.1 The Engineer will provide administration of the Contract as provided in the Contract Documents. The Engineer may act directly or through its properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

2.1.2 The Engineer will represent and act for the Authority as provided in the Contract Documents. The Engineer will have authority to act on behalf of the Authority only to the extent provided in the Contract Documents.

2.1.3 The Engineer will not be responsible for construction means, methods, techniques, sequences or procedures, or construction safety.

2.1.4 The Engineer and his representatives and the Authority and its agents and employees shall at all times have access to the Work and areas occupied by the Contractor. The Contractor shall provide safe and proper facilities for such access and observation and inspection of the Work.

2.1.5 Based on the Engineer's observations and his evaluations of the Contractor's periodic estimates and requests for payment, the Engineer will review and verify the amounts owing to the Contractor and will issue recommendations for payment in such amounts, as provided in Paragraph 10.3.

2.1.6 The Engineer shall decide all questions which may arise as to the performance, quality, acceptability, fitness, and rate of progress of the Work. The Engineer will interpret the requirements of the Contract Documents and will decide claims, disputes and other matters in question relating to performance

00700

- 6 -

Rev. 2 - 1/92

ITI EBBS 000061

Chapter 30

thereunder by the Contractor, subject to the provisions of the Contract Documents and of Section 39J of Chapter 30 of the Massachusetts General Laws.

2.1.7 Pursuant to Section 39P of Chapter 30 of the Massachusetts General Laws, the Engineer will render decisions on interpretation of the Specifications, approval of equipment, material or any other approval, or progress of the Work promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the Engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty-day period and the date by which the decision will be made. Either party to the Contract may make written submission to the Engineer for such decisions.

2.1.8 All materials and all portions of the Work shall be subject to inspection by the Engineer. The Engineer will have authority to reject work which does not conform to the Contract Documents. The Engineer shall be furnished with such information and assistance (including, without limitation, labor, tools, equipment and water or land transportation) by and at the expense of the Contractor as is required to make complete and detailed inspections. Whenever the Engineer considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of portions of the Work in accordance with Article 8 whether or not such work be then fabricated, installed or completed. However, neither the Engineer's authority to act under this Subparagraph 2.1.8, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.1.9 The Engineer will prepare Change Orders in accordance with Article 13, and will have authority to issue Field Orders for minor changes in the Work as provided in Subparagraph 13.5.1.

ARTICLE 3 - CONTRACTOR'S RESPONSIBILITIES

3.1 DUTY TO REVIEW CONTRACT DOCUMENTS AND SITE CONDITIONS

3.1.1 Before starting the Work, and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the Contract Documents with each other and shall at once report to the Engineer all errors, inconsistencies and omissions he discovers. Any necessary change shall be ordered as provided

00700

- 7 -

Chapter 30

in Article 13, subject to the requirements of Paragraph 1.2 and other provisions of the Contract Documents. If the Contractor proceeds with the Work without such notice to the Engineer, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents he could have discovered such, the Contractor shall bear all costs arising therefrom and shall have no claim for increases in the Contract Sum for extra work made necessary thereby.

3.1.2 The Contractor shall give the Engineer timely notice of any additional design drawings, specifications, or instructions required to define the Work in greater detail or otherwise required to permit the proper progress of the Work.

3.1.3 The Contractor shall not proceed with any work not clearly and consistently defined in detail in the Contract Documents, but shall request additional drawings or instructions from the Engineer as provided in Subparagraph 3.1.2. If the Contractor proceeds with such work without obtaining further drawings or instruction, he shall correct at his own expense work incorrectly done.

3.2 PROGRESS SCHEDULE; SCHEDULE OF VALUES

3.2.1 Within ten days after the date of the Authority-Contractor Agreement, Section 00500 (unless otherwise specified in the Specifications), the Contractor shall prepare and submit to the Engineer for review, in each case in such form and supported by such data to substantiate its accuracy as the Engineer may require:

- .1 An estimated progress schedule indicating the starting and completion dates of the various stages of the Work including any information and following any form as may be specified in the Specifications;
- .2 A preliminary schedule of Shop Drawing, Product Data and Sample submittals; and
- .3 A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Sum and will sub-divide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such sums will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by Contractor at the time of submittal.

00700

- 8 -

Rev. 2 - 1/92

ITI EBBS 000063

Chapter 30

3.2.2 The Engineer will review the schedules submitted provided in Subparagraph 3.2.1 and the Contractor shall make changes and corrections in such schedules as requested by the Engineer and resubmit such schedules until approved by the Engineer.

3.3 SUPERVISION BY CONTRACTOR

3.3.1 The Contractor shall supervise and direct the Work competently and efficiently, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

3.3.2 The Contractor shall employ and maintain on the Work a qualified Superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The Superintendent shall have full authority to act on behalf of the Contractor. No change shall be made in the Superintendent without the Authority's approval, and the Authority may require the replacement of the Superintendent for cause. The Superintendent and necessary assistants shall be in attendance at the site at all times during the progress of the Work until final completion of the Work. The Contractor shall coordinate and supervise the work of all Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Superintendent and authorized representatives of any Subcontractors as requested by the Engineer or the Authority, shall attend construction coordination meetings and all other project meetings. The Superintendent shall represent the Contractor and notices or other communications given to him shall be as binding as if given to the Contractor directly.

3.3.3 The Contractor shall be responsible for the acts and omissions of his employees, Subcontractors, and their agents and employees, and other persons performing any of the Work.

3.3.4 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Engineer in his administration of the Contract, or by inspections, tests or approvals required or performed under Article 8 by persons other than the Contractor.

3.3.5 Where the Contract Documents refer to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used in the Work, such

00700

- 9 -

Chapter 30

mention is intended only to indicate that the operations of the Contractor shall be such as to produce at least the quality of work implied by the operations described, but the actual determination of whether or not the described operations may be safely and suitably employed on the Work shall be the responsibility of the Contractor, who shall notify the Engineer in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the Work, if these differ from those mentioned in the Contract Documents. All loss, damage or liability, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor, notwithstanding that such construction means, methods, techniques, sequences or procedures are referred to, indicated or implied by the Contract Documents, unless the Contractor has given timely notice to the Engineer in writing that such means, methods, techniques, sequences or procedures are not safe or suitable, and the Contractor has then been instructed in writing to proceed at the Authority's risk.

3.3.6 If work is suspended for any reason at any time on any portion of the Work, prior notice shall be given to the Engineer of such suspension and of the resumption of such Work.

3.3.7 Dependent Work: Wherever the work of the Contractor or of a Subcontractor is dependent upon the work of other Subcontractors or the work of separate contractors, then the Contractor shall, and shall require such Subcontractor whose work is so dependent to:

- .1 Coordinate his work with the dependent work,
- .2 Provide necessary dependent data and requirements,
- .3 Supply and/or install items to be built into dependent work of others,
- .4 Make provisions for dependent work of others,
- .5 Examine dependent drawings and specifications,
- .6 Examine previously placed dependent work,
- .7 Check and verify dependent dimensions of previously placed work,
- .8 Notify the Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of his work,
- .9 Not proceed with his work until the unsatisfactory dependent conditions have been corrected.

Installation of work by the Contractor or by a Subcontractor in any given area shall constitute acceptance by the Contractor or by such Subcontractor of all previously placed dependent work.

00700

- 10 -

Rev. 2 - 1/92

ITI EBBS 000065